

REMARKS

Claims 1 to 29 remain pending.

Claims 1 to 29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0010114 to Dufay et al. (the Dufay publication). The Action stated that the Dufay publication discloses an aqueous, personal cleansing composition having 1 to 70 wt% of surfactants, fats, and waxes. The Action admits that the Dufay publication is silent with respect to viscosity. The Action further stated that it was prima facie obvious to combine the components of the composition in requisite proportions to encompass the claimed viscosity.

The rejection of claims 1 to 29 under 35 U.S.C. 103(a) over the Dufay publication is not well taken. A prima facie case of obviousness has not been established.

The Dufay publication discloses aqueous cleansing compositions having about 20 to about 40 wt% of a fatty acid alkyl ester and about 5 to about 20 wt% of an emulsifier. The emulsifier is in the form of a PIT emulsion with droplets having a mean diameter of below about 50 micrometers. Optional ingredients include refatting agents, polyols, surfactants, oil components, fats, waxes, pearlizing waxes, superfatting agents, stabilizers, polymeric surfactants, silicone compounds, UV protection factors, antioxidants, light-blocking pigments, biogenic agents, deodorants, germ inhibitors, enzyme inhibitors, odor absorbers, antiperspirants, oil-soluble auxiliaries, film formers, antidandruff agents, swelling agents, insect repellents, self-tanning agents, depigmenting agents, hydrotropes, preservatives, perfume oils, and dyes.

First, claims 1 to 29 require at least three different ingredients that are merely optional in the compositions of the Dufay publication. Independent claim 1 requires a) about 0.05 wt% to about 20 wt% of one or more waxes having a melting point of about 70° C or more and b) an anionic surfactant and an additional surfactant selected from the group consisting of a nonionic surfactant, an amphoteric surfactant, and a combination thereof in an amount effective to stabilize the wax in the composition. On the contrary, the Dufay publication does not disclose any kind of wax in any amount as being an essential ingredient. None of the working examples in Table 1 of the Dufay publication employ a wax of any kind in any amount. Thus, the presence of a wax of any kind in the Dufay compositions could hardly be described as essential. Further to the contrary, the Dufay publication does not disclose any kind of surfactant in any amount as being essential. None of the working examples in Table 1 of the Dufay publication disclose an anionic, nonionic surfactant, or amphoteric surfactant. Thus, the presence of a surfactant of any kind in the Dufay compositions could hardly be described as essential.

Second, the claims 1 to 29 are not suggested in view of the considerable picking and choosing that must be employed to modify the composition of the Dufay publication to yield the present invention. To obtain the claimed invention, the Dufay compositions would have to be modified as follows: 1) select a wax from among the lengthy list of functional classes of optional ingredients (list delineated above in summary of the disclosure of the Dufay publication), 2) select a wax having a melting point of 70° C or more, 3) select an amount of wax from within a particular range, 4) select a surfactant from among the lengthy list of functional classes of optional ingredients (see above), 5) select an anionic surfactant from among the disclosed

surfactants (cols. 4 and 5), 6) select an additional surfactant from the group of nonionic surfactants, amphoteric surfactants, and combinations thereof, and 7) select an amount of the anionic surfactant and the additional surfactant effective to stabilize the wax in the claimed composition. In summary, one skilled in the art would have to select a particular combination of at least three different ingredients and amounts therefor from teachings to merely optional ingredients to arrive at the claimed invention. From the foregoing, it is apparent that the Dufay publication does not suggest the claimed invention nor render it *prima facie* obvious.

Third, the claimed composition affords surprising performance advantages not contemplated by the Dufay publication. The applicants surprisingly found that a cleansing composition that includes a high melting point wax provides gentle, effective cleaning yet provides for protection and/or replenishment of essential skin oils. In particular, it was surprisingly found that a high melting point wax included in the cleansing composition provides a protective layer that conditions and moisturizes while facilitating the replenishment of such content in the skin or hair. Additionally, including the high melting point wax enhances the wash resistance and integrity of the formed protective layer (page 3).

Although the Dufay publication describes a fatty acid alkyl ester and emulsifier cleaning composition that may include a variety of optional ingredients, there is no teaching or suggestion to include a wax having a high melting point to achieve the surprising advantages of the present invention. While the Dufay publication discloses cleaning preparations as being useful as concentrates for mild skin cleansers, they are also suitable, in principle, for domestic and industrial

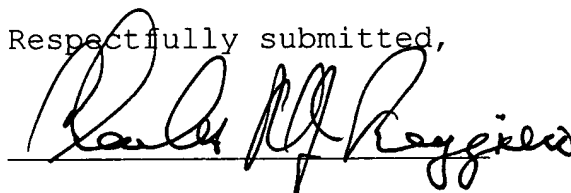
applications involving the cleaning of hard, oil-polluted surfaces (paragraph 0058). One of ordinary skill in the art aiming to provide a composition to cleanse the skin or hair while protecting and replenishing essential oils therein would not look to the teachings of the Dufay publication to do so.

While some of the waxes having the high melting point required by the present invention are listed in the lengthy list of waxes in the Dufay publication (page 5), there is no indication that one wax would be suitable over another for the purpose of providing gentle, effective cleaning yet providing for protection and/or replenishment of essential skin oils. Thus, the claimed invention is neither taught nor suggested by Dufay et al.

Reconsideration of claims 1 to 29 is deemed warranted in view of the foregoing, and allowance of said claims is earnestly solicited.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N. J. Ruggiero", is written over a horizontal line.

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